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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,977	06/27/2001	Kirk D. Smith	WTI-2-CON	4764

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EXAMINER
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JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 04/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/892,977	SMITH ET AL.
	Examiner Cheryl Juska	Art Unit 1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 27 June 2001.

2a) This action is FINAL.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 50-73 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 50-73 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 27 June 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3 .	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102/103***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 50, 54, 55, 57-63, 65-67, 69-71, and 73 are rejected under 35 USC 102(b) as being anticipated by, or in the alternative, under 35 USC 103(a) as being unpatentable over US 4,242,394 issued to Leib et al.

Applicant claims a carpet comprising (a) a primary backing of a woven fabric component needlepunched to a bonded nonwoven fabric component and (b) a piling yarn inserted through said primary backing. The primary backing has a dimensional stability as measured by a specified process of 3-20 lbs. The nonwoven component has a basis weight of 0.25-5 oz/yd<sup>2</sup>, preferably 0.5-3 oz/yd<sup>2</sup>, and more preferably 0.75-3.0 oz/yd<sup>2</sup>. The woven component has a basis weight of 2-8 oz/yd<sup>2</sup>, preferably 3-5 oz/yd<sup>2</sup>. The weight ratio of the woven to nonwoven components is 1-5. The woven fabric has 20-35 ends per inch and 10-30 picks per inch. The carpet may also include a secondary backing. The warp and fill yarns of the woven fabric are

preferably continuous monofilament polypropylene fibers, while the nonwoven fabric is of polypropylene, nylon, polyester, polyethylene, or combinations thereof. The woven fabric is preferably a plain weave fabric, while the nonwoven component is preferably bonded by needle-punching.

Leib teaches a reinforced primary backing for a tufted pile fabric (abstract). Said reinforcing backing comprises a nonwoven capping layer of staple fibers, a reinforcing layer, and a woven backing (abstract, col. 2, lines 43-47). The capping layer is needled into and through the reinforcing layer and woven backing layer (abstract and col. 2, lines 33-38). The reinforcing layer may be a spunbond polypropylene nonwoven comprising continuous filaments which are thermally bonded at the filament crossover points (col. 2, lines 48-63). The woven backing layer is a conventional primary backing of a woven scrim of polypropylene monofilament ribbon strands as taught by US 3,605,666 issued to Kimmel et al. and US 3,817,817 issued to Pickens et al. (col. 2, lines 64-68). Pickens exemplifies a scrim having 12 ends by 8 picks (12 x 8 count) and weighing 2.75 oz/yd<sup>2</sup> but explicitly teaches other configurations may be substituted (col. 3, lines 1-10). Leib exemplifies a 24 x 13 count woven scrim. The Leib primary backing is tufted, backsized, and optionally bonded to a secondary backing.

Thus, Leib teaches the present invention with the exception of the claimed dimensional stability. However, it is reasonable to presume that the Leib invention inherently possesses said dimensional stability. Support for said presumption is in the use of like materials (i.e., woven polypropylene monofilament scrim and bonded polypropylene nonwoven) and the use of like processes (i.e., needlepunching said scrim and said nonwoven into a primary backing and then tufting said primary backing). The burden is upon Applicant to prove otherwise. *In re*

*Fitzgerald*, 205 USPQ 495. In the alternative, the claimed dimensional stability would obviously have been present once the Leib invention is provided. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. Therefore, claims 50, 54, 55, 57-63, 65-67, 69-71, and 73 are rejected as being anticipated or obvious over the cited Leib patent.

***Claim Rejections - 35 USC § 103***

4. Claims 51-53 and 68 are rejected under 35 USC 103(a) as being unpatentable over the cited Leib reference.

Leib is silent with respect to the basis weight of the nonwoven component. However, spunbond nonwoven fabrics of the presently claimed basis weight are well-known in the art. Specifically, Leib teaches a spunbond fabric, such as DuPont's Typar™ (col. 2, lines 57-60). Applicant is hereby given Official Notice that Typar™ is readily available in weights within the ranges presently claimed. As such, it would have been obvious to a person having ordinary skill in the art to utilize a spunbond nonwoven within the basis weight claimed for the invention of Leib. Such a modification would have been motivated by the availability of said nonwoven. The Examiner notes that the facts asserted to be common and well-known are capable of instant and unquestionable demonstration as being well-known. To adequately traverse such a finding, an Applicant must specifically point out the supposed errors in the Examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. Spunbond nonwovens of the claimed basis weight are so common in the art

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that Leib may already be using them. Therefore, claims 51-53 and 68 are rejected as being obvious over the cited prior art.

5. Claim 64 is rejected under 35 USC 103(a) as being unpatentable over the cited Leib patent in view of US 5,213,735 issued to Schneider et al.

Leib fails to teach a needled nonwoven fabric as the reinforcing layer. However, it is well known in the art that spunbond fabrics can be thermally bonded and/or needlepunched. For example, Schneider teaches a needlepunched spunbond fabric with increased strength, integrity, and basis weight uniformity and with high production speeds (abstract, col. 1, lines 13-21 and col. 1, line 59-col. 2, line 16). Thus, it would have been obvious to one of ordinary skill in the art to employ a needled nonwoven fabric, as taught by Schneider, for the reinforcing layer of Leib. Motivation to do so would be the inherent advantages of said nonwoven, such as strength and uniformity. Therefore, claim 64 is rejected as being obvious over the cited prior art.

6. Claims 56 and 72 are rejected under 35 USC 103(a) as being unpatentable over the cited Leib reference.

Leib does not explicitly teach a weight ratio of the woven component to the nonwoven component. However, as noted above, Leib teaches one woven component having a basis weight of 2.75 oz/yd<sup>2</sup>. When employing a woven component of this basis weight and a spunbond nonwoven component of about 2.0 oz/yd<sup>2</sup>, as is known in the art, the weight ratio would be within the range claimed (i.e., 1.4). Thus, it would have been obvious to one skilled in the art to select the basis weights of the nonwoven and woven components and, hence, the weight ratio of the two, within the range presently claimed. Specifically, the weights of each component are known in the art and selection of each would be a matter of discovering an

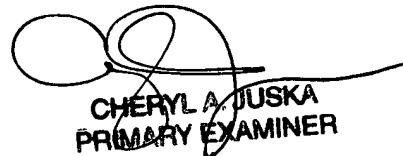
optimum value of result effective variables such as overall carpet weight, strength, and cost. *In re Boesch*, 205 USPQ 215. Therefore, claims 56 and 72 are rejected as being obvious over the cited prior art.

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



CHERYL A. JUSKA  
PRIMARY EXAMINER